

Report to District Development Management Committee



Report Reference: EPF/2217/19
Date of Meeting: 22 January 2020

Epping Forest District Council

Address: Land at Potash Road, Matching Green, Essex, CM17 0RN

Subject: Planning Application for the erection of two dwelling houses (Revised Design 3) including the removal of existing underground storage tanks.

Responsible Officer: Sukhi Dhadwar (01992 564597)

Democratic Services: Gary Woodhall (01992 564470)

Recommendation(s):

This application carried an officer recommendation to refuse permission when reported to Area Plans Sub-Committee East at their meeting on 27 November 2019. The reasons for refusal were:

- (1) The site is located within land designated as Metropolitan Green Belt where there is presumption against inappropriate development. The proposal would result in significantly greater impact on openness than the existing development and is therefore inappropriate development by definition harmful. No very special circumstances or other considerations have been advanced that would outweigh the harm caused by the inappropriateness and the other harm identified, and the development would therefore conflict with Chapter 13 of the National Planning Policy Framework and Policy GB2A and GB7A of the Combined Policies of Epping Forest District Local Plan and alterations 2008 and DM4 of the Submission Version of the Local Plan.
- (2) The application does not provide sufficient information to satisfy the Council, as competent authority, that the development has not adversely affected the integrity of the Epping Forest Special Area for Conservation and there are no alternative solutions or imperative reasons of overriding public interest why the development should be permitted. As such the development is contrary to Policies CP1 and CP6 of the Epping Forest Local Plan (1998) and Alterations (2006), Policies DM 2 and DM 22 of the Epping Forest District Local Plan Submission Version (2017) and the requirements of the Habitats Regulations 2017.

This application has been included within the agenda of this committee as a consequence of the motion for approval of the application being supported by the majority of members of the East Area Planning Committee. This then resulted in four members of this Committee standing up in order to require that no action be taken on this application until it be considered by members of the District Development Management Committee.

The officer's original report to the East Area Planning Committee is reproduced below.

This application is before this Committee since it has been ‘called in’ by Councillor Richard Morgan (Pursuant to The Constitution, Part Three: Scheme of Delegation, Appendix 3).

Site and Surroundings

The application site is located within a sporadic area of development to the east of Matching Green. Access to the site is through a private road, over which the applicant has right of access to and which adjoins Potash Road to the north.

To the immediate north are two neighbouring bungalow style dwellings, whose rear gardens are approximately 21m long and back onto the application site. The adjacent land to the west is frequently used as a paddock for horses, the land to the immediate south is used as a ménage for their exercise, the barn to the north east of the site is used for their stabling and the large barn to the south, separated by a moat, is a large barn used as an indoor training area and stable. Elmbridge House is located to the west of the site beyond the paddocks at a distance of approximately 80m from the site.

Currently on the site there are various underground storage tanks however the only visible features are the pipework that connects them and an above ground, rather dilapidated looking single storey building. The site is located within the boundaries of the Metropolitan Green Belt. It is not in a Conservation Area.

Description of Proposal:

Permission is sought for the construction of two detached houses.

House 1 is three bedroomed and has an L shaped layout of which the main stem measures 17m by 6m, the western wing measures 6m by 7m.

House 2 also has an L shaped layout of which the stem measures 16m by 6m and the southern wing measures 8m by 6m.

Both houses have maximum height of 4.5m to the ridge of their gable roofs. Both houses contain 4 rooflights in the roof.

External finishes include Black weatherboard cladding, Solar tile PV panels and slated roof, grey aluminium sliding doors and windows. A 1.6m high close boarded fence and 2m high green hedge is proposed along the boundary.

Access is proposed via the gravel track off Potash Road into a gated drive on the eastern boundary of the site.

Relevant History:

Reference	Description	Decision
CLD/EPF/0173/99	Certificate of lawful development application for use of land for underground storage	Lawful
EPF/2724/16	Erection of two dwelling houses.	Granted/Conditions
EPF/2756/18	Erection of 2 no. dwellinghouses (Revised Design 2) including removal of existing underground storage tanks	Refused

1. The site is located within land designated as Metropolitan Green Belt where there is presumption against inappropriate development. The proposal would result in significantly greater impact on openness than the existing development and is therefore inappropriate development by definition harmful. No very special circumstances or other considerations have been advanced that would outweigh the harm caused by the inappropriateness and the other harm identified, and the development would therefore conflict with Chapter 13 of the National Planning Policy Framework and Policy GB2A and GB7A of the Combined Policies of Epping Forest District Local Plan and alterations 2008 and DM4 of the Submission Version of the Local Plan.
2. The proposed first floor window and balcony within the northern flank elevation of both the houses would detract from the amenities of the adjoining residents at 6 and 7 Potash Road as a result of the serious increase in the real and perceived level of overlooking created. The proposal is therefore contrary to the requirements of paragraphs 127(f) and 130 of the NPPF and policy DBE9 of the Epping Forest District Local Plan and Alterations along with policy DM9 of the Submission Version Local Plan..
3. The application proposes not to remove the underground tanks, therefore the risk of leakage from the tanks and the associated infrastructure within the ground still exists. This means that the risk associated with the tanks and the underlying infrastructure to human health, buildings, services and controlled waters will still remain. The proposal is therefore contrary to the requirements of paragraph 170 of the NPPF, policy RP4 of the Adopted Local Plan and policy DM21 of the Submission Version Local Plan.

EPF/0189/19

Erection of 2 no. dwellinghouses (Revised Design 2) including removal of existing underground storage tanks. (Revised application to EPF/2756/18).

Refused Appeal pending

Reason for refusal: The site is located within land designated as Metropolitan Green Belt where there is presumption against inappropriate development. The proposal would result in significantly greater impact on openness than the existing development and is therefore inappropriate development by definition harmful. No very special circumstances or other considerations have been advanced that would outweigh the harm caused by the inappropriateness and the other harm identified, and the development would therefore conflict with Chapter 13 of the National Planning Policy Framework and Policy GB2A and GB7A of the Combined Policies of Epping Forest District Local Plan and alterations 2008 and DM4 of the Submission Version of the Local Plan.

DEVELOPMENT PLAN

Section 70(2) of the Town and Country Planning Act 1990, as amended ("the 1990 Act"), requires that in determining any planning application regard is to be had to the provisions of the Development Plan, so far as is material to the application and to any other material planning considerations.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) ("the 2004 Act") requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

The Development Plan currently comprises the saved policies of the Epping Forest District Council Adopted Local Plan (1998) and Alterations (2006) ("the Adopted Local Plan"). The following Adopted Local Plan policies are relevant to the determination of this application:

CP1	Achieving Sustainable Development Objectives
CP2	Protecting the Quality of the Rural and Built Environment
DBE1	Design of New Buildings
DBE4	Design in the Green Belt
DBE9	Loss of Amenity
LL1	Rural Landscape
LL9	Felling of Preserved Trees
LL10	Adequacy of Provision for Landscape Retention
LL11	Landscaping Schemes
DBE1	Design of new buildings
RP4	Contaminated land
U3B	Sustainable drainage
DBE8	Private amenity Space
ST1	Location of development
ST2	Accessibility of development
ST4	Road Safety
ST6	Vehicle parking standards
H1A	Housing Provision
GB2A	Development in the Green Belt
GB7A	Conspicuous Development
NC1	SPAs, SACs and SSSIs
NC4	Protection of Established Habitat

NATIONAL PLANNING POLICY FRAMEWORK

The current version of the National Planning Policy Framework ("the Framework" or "NPPF") was published in February 2019. It provides the framework for producing Local Plans for housing and other development, which in turn provide the policies against which applications for planning permission are decided.

Reflecting the proper approach identified in the previous section of this Report, the NPPF explains (at paragraph 2) that:

"2. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.²"

Paragraph 11 of the NPPF concerns the presumption in favour of sustainable development and states (so far as relevant):

"Plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁷, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole."

Paragraph 11 d) ii. is often referred to as the 'tilted balance'.

In summary, the effect of footnote 7 is that where a local planning authority is unable to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 73 of the NPPF, or where the Housing Delivery Test indicates that the delivery of housing was substantially below (that is less than 75% of) the housing requirement over the previous three years, "the policies which are most important for determining the application" are deemed to be "out-of-date", so that the presumption in favour of sustainable development applies and planning permission should be granted unless either sub-paragraph (i) or (ii) is satisfied.

For the purposes of sub-paragraph (i) of paragraph 11, footnote 6 lists the policies in Framework (rather than those in development plans) that protect areas or assets of particular importance including: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, or Local Green Space; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63 of the NPPF); and areas at risk of flooding.

The presumption in favour of sustainable development does not, however, change the statutory status of the development plan as the starting point for decision making. In accordance with paragraph 213 of the NPPF and subject to paragraph 11 d) and footnote 7 referred to above, policies in the development plan should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF. Rather, due weight should be given to such policies according to their degree of consistency with the NPPF; in other words the closer the policies in the development plan to the policies in the NPPF, the greater the weight that may be given to them).

In addition to paragraph 11, the following policies in the NPPF are relevant to this application:

Paragraph 108 - 110
Paragraph 117
Paragraph 124
Paragraph 127
Paragraph 130
Paragraph 131
Paragraph 133
Paragraph 143 - 145

EMERGING LOCAL PLAN

On 14 December 2017, the Council resolved to approve the Epping Forest District Local Plan (2011-2033) – Submission Version ("LPSV") for submission to the Secretary of State and the Council also resolved that the LPSV be endorsed as a material consideration to be used in the determination of planning applications.

The Council submitted the LPSV for independent examination on 21 September 2018. The Inspector appointed to examine the LPSV ("the Local Plan Inspector") held examination hearings between 12 February and 11 June 2019. As part of the examination process, the Council has asked the Local Plan inspector to recommend modifications of the LPSV to enable its adoption.

During the examination hearings, a number of proposed Main Modifications of the LPSV were 'agreed' with the Inspector on the basis that they would be subject to public consultation in due course. Following completion of the hearings, in a letter dated 2 August 2019, the Inspector provided the Council with advice on the soundness and legal compliance of the LPSV ("the Inspector's Advice"). In that letter, the Inspector concluded that, at this stage, further Main Modifications (MMs) of the emerging Local Plan are required to enable its adoption and that, in some cases, additional work will need to be done by the Council to establish the precise form of the MMs.

Although the LPSV does not yet form part of the statutory development plan, when determining planning applications, the Council must have regard to the LPSV as material to the application under consideration. In accordance with paragraph 48 of the Framework, the LPAs "may give weight to relevant policies in emerging plans according to:

- a) The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).²²"

Footnote 22 to paragraph 48 of the NPPF explains that where an emerging Local Plan is being examined under the transitional arrangements (set out in paragraph 214), as is the case for the LPSV, consistency should be tested against the previous version of the Framework published in March 2012.

As the preparation of the emerging Local Plan has reached a very advanced stage, subject to the Inspector's Advice regarding the need for additional MMs, significant weight should be accorded to LPSV policies in accordance with paragraph 48 of Framework. The following table lists the LPSV policies relevant to the determination of this application and officers' recommendation regarding the weight to be accorded to each policy.

Policy	Weight afforded
SP1 Presumption in Favour of Sustainable Development	Significant
SP2 Spatial Development Strategy 2011-2033	Some
SP3 Place Shaping	Significant
H1 Housing Mix and Accommodation Types	Some
T1 Sustainable Transport Choices	Significant
DM2 Epping Forest SAC and the Lee Valley SPA	Significant
DM3 Landscape Character, Ancient Landscapes and Geodiversity	Significant
DM4 Green Belt	Significant
DM5 Green and Blue Infrastructure	Significant
DM9 High Quality Design	Significant
DM10 Housing Design and Quality	Significant
DM11 Waste Recycling Facilities on New Development	Significant
DM15 Managing and Reducing Flood Risk	Significant
DM16 Sustainable Drainage Systems	Significant
DM17 Protecting and Enhancing Watercourses and Flood Defences	Significant
DM18 On Site Management of Waste Water and Water Supply	Significant
DM19 Sustainable Water Use	Significant
DM21 Local Environmental Impacts, Pollution and Land	Significant

Contamination DM22 Air Quality	Significant
-----------------------------------	-------------

Consultation Carried Out and Summary of Representations Received

Number of neighbours consulted: 9

Responses received:

ELMBRIDGE HOUSE: COMMENT: We agree with the proposal subject to the remedial works that are carried out to the removal of the tanks are completed successfully and a validation certificate is issued. We also are concerned on the utilities supply to the surrounding area, we have poor water supply currently and expect the same if not improved service once the construction has been completed.

Access to our property should not be impeded at any time and works carried out only midweek and between the hours of 08.00 and 17.00 hours.

6 AND 7 POTASH ROAD –SUPPORT– Reduces the adverse impact of development in the Green Belt relating to height and size as well as a design in keeping with neighbouring buildings.

2: Reduces the potential for people and traffic movements adjacent to my property and over the access road which I use to access my property.

3: Minimises the disruption of clearing the Site and subsequent building work.

4: By association improves the safety of the people and horses who are involved in the working equestrian establishment of Stock Farm, which completely surrounds this 'island development Site', not only during development but in the future as well.

Due care and attention to the neighbouring properties and animals.

As mentioned before, we have no issue for the improvements to occur on the site but all the above must be complied with for us to agree the proposals.

2 LEA HALL BUNGALOWS DUNMOW ROAD: SUPPORT the application

STOCK FARM POTASH ROAD: NO OBJECTION

PARISH COUNCIL: SUPPORT the application

ESSEX COUNTY COUNCIL HIGHWAYS AUTHORITY: From a highway and transportation perspective the Highway Authority has no objections to make on this proposal as it is not contrary to the Highway Authority's Development Management Policies, adopted as County Council Supplementary Guidance in February 2011, policies ST4 & ST6 of the Local Plan and policy T1 of the Local Plan Submission Version 2017.

ENVIRONMENTAL HEALTH (LAND CONTAMINATION): Updated memo

The phase I desk study report has now been thoroughly reviewed by the council external consultant. The feedback in full and what is required for submission to the council is provided below:

The Phase I report (ref. 0984-P1E-1-B) and Proposed Scope of Works (ref.0984-P2E-1-AScope), both dated August 2019, relating to potential contamination issues at the above site has been reviewed and I have the following comments to make regarding its content: The Phase I report satisfactorily addresses the requirements for submission of a desktop study, in that it is signed, countersigned and dated, contains: relevant information of a site

walkover performed; background information for the site and surrounding area; details of previous site investigations undertaken; a conceptual site model (CSM); and a preliminary risk assessment identifying active contaminant linkages; and conclusions.

Historic maps show potential contamination on-site from the previous use of the land as a military fuel storage depot, and more latterly as a chemical storage depot. The wider surrounding, up to >250m has also been used for military purposes, along with agricultural fields. There are no landfills within 250m of the site boundary. The Phase I report undertook a site walkover, noting the land planned for development as currently unused. A single building on the site may possibly contain asbestos containing materials (investigations of this sort were beyond the scope of the report). A total of six access covers representing six underground storage tanks (USTs) were identified. No details were provided as to whether the USTs had been decommissioned. No visual or olfactory signs of contamination were recorded.

Contaminants of concern include, metals, hydrocarbons, PAHs, pesticides and ACMs. Given the previous land use and presence of USTs, a significant depth of made ground can be expected. A site investigation was previously undertaken in 2017 (report ref. 0984-PGE-1).

While this report has not been submitted to the LPA as part of this application, the Phase I outlines the main findings. Following seven soil samples analysed contaminants above guideline values were recorded for metals, TPH, PAHs and VOCs. Significant increases above GACs were noted for PAHs (BaP, BbF and BaA) and VOC vapours (Benzene and 1,2,4 Trimethylbenzene). Given the surrounding historic military land use and the known thickness of superficial deposits with high leaching potential, migration of contaminants, via the perched groundwater pathway, have to be considered. The existing building is planned to be demolished and therefore without an asbestos survey to identify any ACMs present, there is potential for asbestos to impact surface soils. Of the eighteen contaminant linkages listed in the preliminary CSM, a high risk rating was attributed to the inhalation of asbestos fibres to site workers. A moderate risk rating was attributed to the ingestion of these contaminants via the home grown produce pathway, the inhalation of VOCs, the migration of contaminants via groundwater, as well as the inhalation of asbestos fibres to end users. A moderate/low risk rating is attributed to the direct contact, inhalation and ingestion of potentially contaminated soil. No risk is attributed to ground gas following the previous site investigation results. However, these results have not been provided to assess if monitoring was undertaken in accordance with best practice, as stipulated under CIRIA C665. The report therefore proposes an intrusive site investigation. This should include sampling at both the surface of soils, as well as at depth to determine the potential for the contaminative impact on soils and perched groundwater. Without further information showing the extent of previous gas monitoring undertaken, the site investigation should further include gas monitoring to determine the potential for ground gases.

The Scope of Works report describes the proposed site investigation, providing details of sampling techniques to be undertaken following the removal of the six USTs, the number of targeted samples to be taken (including a sampling plan in the appendices), quality control for sampling and storage of soil samples, and the contaminant suite of chemicals to be tested. The site investigation proposed is considered satisfactory and the proposed number of samples sufficient. It is considered that works described are designed to inform the CSM and to determine the extent of any remediation required to allow the site to be fit for the purpose of a residential with garden end use.

After review of the Phase I and Scope of Works reports, the following information is required to be submitted to the Local Planning Authority (LPA) for approval:-

1. Further details of the previous site investigation (2017) which shows the extent of gas monitoring undertaken. Where this cannot be provided further gas monitoring will be required;
2. An intrusive site investigation, as described in the Scope of Works report. Sampling of soils should include a satisfactory number taken throughout the soil profile, at each depth, to ensure confidence in assessing risks from all contaminant pathways;
3. An asbestos survey for the building planned for demolition, and where ACMs are identified a Method Statement which describes how ACMs will be safely removed off site and disposed of, without impacting surface soils.

Should the LPA be minded to grant planning permission I would recommend that the following conditions remain on the decision Notice:-

SCN57 - Contaminated Land (PC)

SCN58 - Contaminated Land - Approval of Verification Report

SCN59 - Contaminated Land - Not Previously Identified Any proposed gas monitoring should be undertaken in accordance with best practice as outlined in BS5756:2013, BS 8485:2015, Claire RB17 and CIRIA C665. All site investigation works should be undertaken in accordance with BS10175:2011 (as stipulated in the Scope of Works report). Failure to comply with these documents could result in further delays to the discharge of contaminated land conditions.

LAND DRAINAGE TEAM: The site does not lie within an Epping Forest District Council flood risk assessment zone.

Any works to or within eight metres of an open or piped watercourse will require Land Drainage Consent. For further information on the Land Drainage consent process or to find the application forms the applicant should visit the link below.

http://www.eppingforestdc.gov.uk/index.php/residents/yourenvironment/drainage/flooding_and_land_drainage

The applicant has no proposal to dispose of foul sewage. Further details are required. Please add condition SCN16 requiring approval of foul drainage details by the Local Planning Authority prior to preliminary groundworks commencing.

The applicant is proposing to dispose of surface water by sustainable drainage system/soakaway. The geology of the area is predominantly clay and infiltration drainage may not be suitable for the site. Further details are required. Please add condition SCN16 requiring approval of surface water drainage details by the Local Planning Authority prior to preliminary groundworks commencing No objection to planning application in principle, subject to the approval/implementation of the requirements set out above by this team.

PLANNING CONSIDERATIONS

The main issues for consideration in this case are:

- a) The principle of development;
- b) The impact on the Epping Forest Special Area of Conservation.
- c) The impact on the Green Belt;
- d) The impact on the character and appearance of the locality;
- e) Highway safety and parking provision;
- f) The impact to the living conditions of neighbours;

g) Residential amenity space for future occupiers;

Principle of Development

The application site is not allocated for development in the LPSV. The site was not assessed as part of the site selection process informing the preparation of the emerging Local Plan.

Furthermore the policy team have advised us that the air quality modelling has been done on the basis of the allocated sites and limited windfall sites within the later years of the plan. So on that basis any net increase in dwellings has an impact on air quality that has not been assessed and therefore will have an increased impact beyond what has been modelled in the Council's Habitat's Regulations Assessment 2019.

Additional 'windfall' sites will be permissible under Part B of Policy SP 2, within defined settlement boundaries, where they comply with all other relevant policies of the Local Plan. This site is located within Green Belt and therefore is outside of the defined settlement boundary of urban areas. It is for this reason that there are more sequentially preferable sites within the Districts in terms of their sustainability. The proposal is therefore contrary to this policy.

Green Belt

Government Guidance states that new development within the Green Belt is inappropriate unless it falls within the list of exceptions set out in paragraphs 145 and 146 of the National Planning Policy Framework (NPPF). And provided it does not harm the openness of the Green Belt or conflict with the five purposes of including land within it than the existing development.

Local Policy GB2A is broadly in compliance with the aims and objectives of national Green Belt Policy. The NPPF states that one of the exceptions to inappropriate development within the Green Belt is the limited infilling or partial or complete redevelopment of previously developed sites, whether redundant or in continuing use (excluding temporary buildings) which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development.

Background

Planning permission was granted by members of the East Area Planning Committee held on 15 February 2017. under reference EPF/2724/16 for the demolition and removal of the existing building, the pipework and the underground storage tanks and to erect two new dwellings in their place. The buildings would be detached and semi underground structures.

The previous case officer found that the existing building on the site has a volume of approximately 108 cubic metres. The approved two replacement dwellings which have a total above ground volume of 250 cubic metres would increase the above ground volume on the site by 142 cubic metres. This is volumetric increase of 131% of above ground built form on this Green Belt site.

Members justified this decision on the basis that whilst the volume of the development was greater than that currently on the site, the benefit of remediating the site to provide housing, along with the innovative sunken design of the bungalows was considered to clearly outweigh the harm to the openness of the Green Belt and all the other harms identified.

Refused scheme under reference EPF/2756/18

The refused scheme sought to build two houses with an above ground total volume of 942 cubic metres. This was 8 times the volume of the existing building. It also had a height which is almost the double that of the existing structure. The existing structure is 4m high to the ridge of its roof.

The redevelopment of the underground storage unit for housing would therefore intensify the built form of development within the Green Belt. This would be harmful to the open character of the site. The proposal is therefore by definition inappropriate development.

The applicant argued that further investigations of the soil found the cost of remediation was prohibitive, however, no evidence of the remedial costs were submitted with the application. Furthermore the Land Contamination team advised that if the tanks are not removed the risk associated with the tanks and the underlying infrastructure to human health, buildings, services and controlled waters will remain and as a result will pose a risk to the health of future occupiers of the site. It is for this reason that the reduction in the level of remediation diminishes very special circumstances used to justify the original smaller permission. Furthermore the removal of the 2 dimensional hardstanding did not outweigh the permanent harm resulting from the 3 dimensional houses and paraphernalia.

It is for these reasons that these arguments were insufficient to clearly outweigh the harm to the openness of the green belt and all other harms. The proposal also posed a risk to human health, buildings, services and controlled water and would result in overlooking to neighbouring properties as a result of the proposed position of the balconies.

Refused scheme under reference EPF/0189/19

The floor area was reduced from 139 sqm to 126 sqm, however the dimensions of the two houses are not materially different from that previously refused. Furthermore no viability assessment has been submitted to demonstrate that the approved scheme is unviable due to the cost of remediation and that the proposed scheme would be. The previous justification for refusal on Green Belt grounds therefore still applies in this case.

It is for these reasons that these arguments were insufficient to clearly outweigh the harm to the openness of the green belt and all other harms.

Current Scheme

The gross internal area of house 1 is 118 square metres and house 2 has a gross internal area of 116 square metres. They both have a total above ground volume of 843 cubic metres. This is over 300% more than the previously approved scheme. It is therefore inappropriate development by definition. -

It is noted that the height of the proposal does not exceed the height of the previously approved scheme and that the proposal will a large proportion of the existing hardscaping and replace it with soft landscaping. However these benefits were applied to the approved scheme and therefore this scheme does not offer additional benefits over and above that already approved. In any case the additional volume through its physical presence and the fact that it would be visible from long views around the site will result in a development which will be harmful to the openness of the site.

The proposal therefore conflicts with Green Belt policy within the NPPF, policy GB2A of the Local Plan and policy DM4 of the Submission Local Plan.

Very special circumstances

Paragraph 144 of the NPPF requires that inappropriate development is by definition harmful to the Green Belt. It is for this reason that it would need to be demonstrated that there are very special circumstances which would clearly outweigh the harm to the Green Belt as a result of inappropriateness of the development and all other harms.

The applicant has submitted a viability report which demonstrates that the approved scheme under EPF/2724/16 is unviable and that the application proposal will return a profit of 18.7%. The figures have not been verified by the Council's independent viability consultants and the financial returns of a scheme is not a public benefit and therefore does not clearly outweigh the harm to the Green Belt as a result of inappropriateness of the development and all other harms.

Five Year Housing Supply

Paragraph 73 (in conjunction with footnote 7 of paragraph 11d) of the NPPF requires that housing applications cannot be considered up to date if the Council cannot currently demonstrate a five-year housing supply, however this policy is overridden by footnote 6 of paragraph 11d of the NPPF which requires that the proposal should be restricted because it is contrary to Green Belt policy. This is confirmed by the National Planning Policy Guidance on Housing and economic land availability assessment which unequivocally states that a lack of a 5-year housing supply is not sufficient in its self to justify development within the Green Belt. It reads "Unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt". It is therefore considered that the modest social and economic benefits arising from the creation of one house are insufficient to clearly outweigh the harm to the openness of the Green Belt and all other harms.

It is for these reasons that there are insufficient very special circumstances to clearly outweigh harm to the purposes of the Green Belt and all other harms and as such the proposal conflicts with the requirements of chapter 13 of the NPPF and Policy GB2A of the Local Plan (1998/2006) and DM4 of the Submission Version Plan 2017.

Ecology

The Habitat and Protected Species Ecology Report 2016 by Amphibian, Reptile and Mammal Conservation Limited found that "The habitat survey found that there are no habitats of ecological importance that will be adversely affected by the proposed development and which would require mitigation or compensation in order to maintain the local biodiversity resource.

The desk study highlighted several protected species (two species of bats, Badgers, Great Crested Newts and one species of reptile) as occurring in the surrounding area.

The site assessment, however, found that there is no suitable habitat present for bats to roost within any part of the proposed footprint and no evidence of Badger activity was detected on the site.

There is only one potential Great Crested Newt breeding site within 500 metres of the proposed footprint; this is located on private land at Stock Hall immediately to the south of the site. No attempt was made to access this private site as the assessment was commissioned outside of the main spring amphibian breeding season (March – May inclusive).

Although there are no proven Great Crested Newt records from the moat, it is highly likely that it has never been surveyed for this species due to its location on private land. It is therefore recommended that a survey for this species is undertaken at the appropriate time of the year during the breeding season, subject to access consent from the landowner.”

It is therefore recommended that a condition be attached to any permission requiring further survey work be carried out. It is on this basis that the proposal complies with the requirements of policy NC4 of the Local Plan and DM1 of the SVLP.

Impact on the Epping Forest SAC

Biodiversity features within, or associated with, a Special Area of Conservation enjoy a high level of protection under UK and EU law, and national planning policy in England. The provisions of the EU Habitats Directive are given effect in UK law by the Conservation of Habitats and Species Regulations 2017, as amended ("the Habitats Regulations").

Under the Habitats Regulations, the Epping Forest SAC is classified as a 'European Site' and, as such, any plans and projects (including applications for planning permission) that are likely, either alone or in combination with other plans or projects, to have a significant effect on the SAC must be subject to an assessment, known as an Appropriate Assessment ("AA"). The purpose of an AA is to ascertain whether any development plan or proposal, either alone or in combination, will not harm the integrity of the European Site.

The Council has a legal duty as the 'competent authority' under the Habitats Regulations to protect the Epping Forest SAC from the effects of development (both individually and in combination). Two specific issues relating to new development within the District have been identified as being likely to have a significant effect on the integrity of the Epping Forest SAC. Firstly, the increased levels of visitors using the Forest for recreation arising from new development (referred to as "recreational pressure"). Secondly, damage to the health of the protected habitats and species of flora within the Forest, including trees and potentially the heathland habitats, from air pollution generated by increased motor vehicle usage (referred to as "air quality").

As regards visitor numbers, the adopted Interim Mitigation Strategy identifies that any additional residential development located within 6.2km of the Epping Forest SAC would be likely to have a significant effect when considered alone or in combination with other plans / projects. The application site is located over 10 km from the Epping Forest SAC.

As regards air quality, all proposals that result in additional residential development and / or employment development within the entire District would be likely to have an impact on the Epping Forest SAC when considered alone or in combination with other plans / projects.

Policies DM 2 and DM 22 of the LPSV provide the policy context for dealing with the effect of development on the integrity of the Epping Forest SAC outlined above. The Council commissioned a Habitats Regulations Assessment (January 2019) of the LPSV ("the 2019 HRA"), produced by AECOM, which has been published on the Council Local Plan Examination website. The 2019 HRA includes an Appropriate Assessment of the planned development within the LPSV and the effect of that development on the Epping Forest SAC. The 2019 HRA concluded that, subject to securing the urbanisation/recreational pressure and air quality mitigation measures to which the Council, the adoption of the Local Plan will have no adverse effect on the Epping Forest SAC.

However, following their review of the 2019 HRA, Natural England maintained their objection to the Local Plan, citing a number of specific concerns about the HRA. The Local Plan Inspector has advised that it is not currently possible to conclude beyond reasonable

scientific doubt that the LPSV will not adversely affect the integrity of the SAC and has advised the Council of the actions considered necessary to resolve this.

Recreational Pressure

In respect of recreational pressure, the Local Plan Inspector has advised that the adopted Interim Mitigation Strategy will address the effects of development within 3km of the Epping Forest SAC. The Interim Mitigation Strategy requires the payment of a financial contribution of £352 for Strategic Access Management and Monitoring ("SAMM") per net additional dwelling for development within 0-3 km of the Epping Forest SAC.

The applicant site is beyond of the 3km radius around the SAC and therefore is not required to pay this contribution.

Air Quality

The Interim Mitigation Strategy referred to above does not, however, address the significant effect that all residential and employment development within the District is likely to have on the SAC with regards to air quality. There is currently no interim approach to managing air quality for the District and the Council and other partner organisations continue to work together to identify an acceptable air quality mitigation strategy.

As a consequence, and in light of the Local Plan Inspector's interim advice, the Council, as competent authority, cannot lawfully grant planning permission for any development proposals within the District that are likely to have an air pollution impact on the Epping Forest SAC, save where a site-specific appropriate assessment (AA) demonstrates that the granting permission will not have such an effect in respect of air quality.

The proposed development would result in increased vehicular movements. Air quality modelling has been done on the basis of the allocated sites and limited windfall sites within the later years of the plan. The permission for two houses approved under reference EPF/2724/16 has not been implemented. It is on this basis that any net increase in dwellings will have an impact on air quality that has not been assessed and therefore will have an increased impact beyond what has been modelled in the Council's Habitat's Regulations Assessment 2019. Given that the potential impact on the SAC is still being determined, paragraph 177 of the NPPF requires that the presumption in favour of sustainable development does not apply.

Design

The contemporary design of the houses is of good quality which will preserve the character and appearance of the area in accordance with chapter 12 of the NPPF and policy DBE 1 of the Local Plan.

Quality of resulting residential accommodation

The proposed house is of a good standard of design; provides a good standard of internal space, outlook, ventilation, and access and amenity space in accordance with paragraph 17 of the NPPF and supplementary guidance contained within the Essex Design Guide.

Impact on neighbouring amenity

The houses have an above ground height of 4.5m and all neighbouring properties are sufficiently distant as to ensure that their living conditions will not be additionally affected over and above the approved scheme in terms of light, outlook or privacy.

Issues concerning method and times of construction can be controlled by condition.

The proposal therefore meets the requirements of policy DBE9 of the Local Plan and DM9 of the Submission Version Plan.

Land contamination

The Land Contamination Officer has advised that the site was previously used as a WW2 Military Bulk Fuel Storage Depot and 1970s Chemical Storage Depot and the presence of made ground. After reviewing the submitted information, he recommends that further land contamination conditions are required to ensure that adverse impacts on the environment and human health is minimised in accordance with the requirements of paragraphs 178 -179 of the NPPF, policy RP4 of the Local Plan and policy DM21 of the Submission Version Local Plan.

The Land Contamination Officer has advised that the site was previously used as a laundry with a gasworks in the south of the site, garage and works to the east of the site and a Brickfield to the north. After reviewing the submitted information, he recommends that a remediation strategy and verification plan will be required prior to remediation works commencing on site. Further land contamination conditions are therefore recommended. To meet the requirements of paragraphs 178 -179 of the NPPF, policy RP4 of the Local Plan and policy DM21 of the Submission Version Local Plan.

Highways

Sufficient parking provision has been made to accord with the requirements of ST6 of the Local Plan. The Highways Authority is satisfied that the access arrangements are acceptable. The proposal therefore accords with the requirements of ST4 of the Local Plan. It is for these reasons that the proposal meets the requirements of policy T1 of the SVLP.

Sustainability

The proposal will include a plant room for an air source heat pump and rainwater collection, which is incorporated into the form of the building. The materials used to construct the building with materials which have a lower Global Warming Potential (GWP) than standard materials, low energy lighting will be installed and solar PV tiles will be installed on the roof, rainwater harvesting and recycling, water saving devices, and sustainable materials. The car parking spaces would also be required to include electric charging points by condition. These .Energy efficient design features are proposed for this application will reduce the carbon foot print of the building in this unsustainable location. The proposal therefore complies with the requirements of DM 19 and DM20 of the SVLP.

Other matters

The Grade II listed Stock Hall is sufficiently distant to ensure that it's setting will not be materially affected.

There is no material change in the impact of the proposal on the health and stability of trees, landscaping, parking and access will all remain the same.

Green Belt Balance /Conclusion

The proposal is considered to be inappropriate development in the Green Belt and in addition it will have a serious physical adverse impact on the openness of the site and on the aims and purposes of the Green Belt.

The permission for two houses approved under reference EPF/2724/16 has not been implemented. It is on this basis any net increase in dwellings will have an impact on air quality that has not been assessed and therefore will have an increased impact beyond what has been modelled in the Council's Habitat's Regulations Assessment 2019. Given that the potential impact on the SAC is still being determined, paragraph 177 of the NPPF requires that the presumption in favour of sustainable development does not apply.

No very special circumstances have been demonstrated which clearly outweigh the harm identified above. The proposal is therefore unsustainable development and as a result chapter 13 and paragraph 177 of the NPPF along with Green Belt and habitat protection policies contained within the Local Plan and SVLP require that it should be restricted. Refusal is therefore recommended.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

Planning Application Case Officer: Sukhi Dhadwar

Direct Line Telephone Number: 01992 564597 or if no direct contact can be made please email: contactplanning@eppingforestdc.gov.uk



Appeal Decision

Site visit made on 21 October 2019

by [Conor Rafferty LLB \(Hons\), AIEMA, Solicitor \(Non-practising\)](#)

Decision by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2019

Appeal Ref: APP/J1535/W/19/3233429

Land at Potash Road, Matching Green, Harlow, CM17 0RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr R Tomkins against the decision of Epping Forest District Council.
 - The application Ref EPF/0189/19, dated 22 January 2019, was refused by notice dated 21 March 2019.
 - The development proposed is the erection of two dwelling houses including the removal of existing underground storage tanks
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. The appeal site lies within the Green Belt and so the main issues are:
 - 1) Whether the proposal would constitute inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework).
 - 2) If found to be inappropriate development, whether the harm, by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposal.

Reasons for the Recommendation

Whether the proposal constitutes inappropriate development

4. The appeal site is situated on the southern side of Potash Road, within the Metropolitan Green Belt. It comprises a hardstanding surface with a disused pumping station building and associated pipes located in a central area of the site, surrounded by concrete posts and fencing. Six fuel storage tanks are located below ground. The surrounding area is decidedly rural in nature, with sprawling open fields located nearby. In the immediate vicinity the site is bounded by residential and agricultural buildings to either side, with a horse grazing facility to the rear. The proposal relates to the erection of two dwelling houses on the site to replace

the current building and includes the removal of the existing underground storage tanks.

5. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. While the construction of new buildings is inappropriate in the Green Belt, there are however a limited number of exceptions, as detailed by paragraph 145 of the Framework. This includes at 145(g) the *'limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would: (i) not have a greater impact on the openness of the Green Belt than the existing development; or (ii) not cause substantial harm to the openness of the Green Belt where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority'*.
6. The relevant local plan policies for the development of the proposal in the Green Belt are Policies GB2A and GB7A of the Epping Forest District Local Plan, adopted in January 1998. While Policy GB2A states that the construction of new buildings is inappropriate in the Green Belt except in certain circumstances, it does not list limited infilling or the partial or complete redevelopment of previously developed land as such an exception. Given the age of the policies and the degree of non-conformity with the Framework they should not be considered up to date for decision making purposes and I attach limited weight to them in the context of this appeal.
7. Policy DM4 of the Epping Forest District Local Plan Submission Version (2017) (the Emerging Local Plan) relates to development within the Green Belt and lists a limited number of exceptions, which reflect those cited at Paragraph 145 of the Framework. However, whilst the Emerging Local Plan has reached an advanced stage, no information has been provided on the examining Inspector's advice or whether there are outstanding objections to this policy. In such circumstances I can only attach moderate weight to the policy on the basis of the apparent consistency with the Framework.
8. The Council does not dispute that the proposal would amount to the redevelopment of a previously developed site and has previously granted planning permission for two partially subterranean dwellings. The issue in dispute is whether the current proposal would have a greater impact on the openness of the Green Belt than the existing development.
9. The proposal would involve returning much of the appeal site to a landscaped state, such that the area of hardstanding that currently covers the entire site would be significantly reduced. Although the proposal would also involve the loss of the existing pumping station building, this is much smaller than the proposed dwellings both in area and volumetric terms. The above-ground built form of development would therefore be increased at the site, representing a growth in floorspace from 203sqm to 252sqm, and introducing further domestic paraphernalia in the location.
10. However, floorspace is only one element in the consideration of openness. Whilst much of the existing development is underground, thereby having a limited effect on the openness of the Green Belt, either in a visual or physical sense, the proposed dwellings would result in a substantial increase in the overall bulk and mass of development present within the site and would therefore reduce the openness of the Green Belt in both visual and spatial terms. It would have a much greater impact on the openness of the Green Belt than the existing development.

Accordingly, the proposal does not fall within the exception at Paragraph 145(g) of the Framework. There is no suggestion that the proposal would meet any other exception listed in the Framework and it would therefore represent inappropriate development.

Other Matters

11. The Framework states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In this regard, a number of other considerations have been highlighted by the appellant.
12. A copy of the 'Epping Forest District Local Plan Housing Implementation Strategy – Update January 2019' has been provided as evidence that the Council has a housing land supply of 4.2 years. The appellant argues that fact that the Council cannot demonstrate a 5 year housing land supply should be given substantial weight. In response, the Council rely on the strategy of the Emerging Local Plan. However, whilst that plan has reached an advanced stage it has not yet been adopted. I have no reason to doubt that the strategy will meet the needs of the district moving forward but, on the information provided in relation to this appeal, it is not clear that any of the proposed allocations are available now, or that they are likely to be deliverable within the next 5 years. Accordingly, based on the information before me, the Council has not demonstrated a 5 year supply of deliverable sites.
13. In that context, the supply of two dwellings would represent a benefit in terms of local housing provision, albeit that the weight I attach is moderated by the small scale of the development which would not add substantially to the overall supply, and the fact that the strategy to bring forward housing sites would appear to be close to adoption.
14. The appellant refers to the fact that planning permission has previously been granted at the site for the erection of two dwellings, which have a combined floorspace greater than the proposal. It is the appellant's argument that the proposal would have less of an impact on the openness of the Green Belt than this consented scheme and as such should be granted permission. However, there is no more than a greater than theoretical possibility that the previously consented development will be carried out, particularly as the appellant has provided a Comparative Viability Report which demonstrates that the previously consented scheme is unviable. As such, limited weight is to be attached to this fallback position. In any event, the 'above ground' volume and bulk of the proposed dwellings would be markedly greater than the previously approved scheme and, consequently, the effect on the openness of the Green Belt is substantially greater.
15. Similarly, limited weight should be attached to the appellant's assertion that, in the event of the consented scheme not being viable, the proposal represents the only means of developing the site and realising the benefits put forward. Information relating to viability and development costs has been put forward in relation to the previously approved scheme and the current proposal. However, that does not demonstrate that an alternative scheme with less impact on the openness of the Green Belt would not be viable, or that the erection of two dwellings is the only way to bring the site forward for residential development.

16. The appellant further refers to the design of the proposal and its positive impact on the character and appearance of the area as a potential very special circumstance. The proposal would change the appearance of the site from an industrial location to a landscaped residential area, with a high standard of design. The resulting dwellings would be modern in character, developed with high quality materials and would represent a visually attractive addition to the immediate surrounds. Notwithstanding the impact on openness, it is agreed that the dwellings would have a positive impact on the character and appearance of the site and the surrounding area, and as such moderate weight is attached to this argument.
17. A number of other considerations have been raised by the appellant. These include the fact that the proposal does not involve the use of a greenfield site, makes effective use of previously developed land, is in a sustainable location, would lead to decontamination of the site and would protect, enhance and manage existing habitats at the site. However, even cumulatively, these benefits are modest and I afford them only a moderate amount of weight.

Whether Very Special Circumstances Exist

18. The appeal proposal would constitute inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there would be a loss of openness in the Green Belt. When taken individually or cumulatively, the other considerations advanced in support of the scheme attract moderate weight and do not clearly outweigh the substantial harm to the Green Belt. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.

Conclusion and Recommendation

19. The proposal would be contrary to the relevant policies of the development plan with respect of development within the Green Belt but, for the reasons set out above, those policies are not up to date and limited weight should be afforded to them. In accordance with Paragraph 11(d) of the Framework, where policies that are most relevant for determining an application are out of date, planning permission should be granted unless the application of policies in the Framework that protect areas or asset of particular importance provide a clear reason for refusing the development. As listed in footnote 6 the Green Belt is one such protected area. For the reasons set out above, the development would amount to inappropriate development within the Green Belt and no very special circumstances exist to warrant the grant of planning permission. Accordingly, having regard to the policies of the Framework taken as a whole, and the policies of the Emerging Local Plan which carry some weight, planning permission should be refused.
20. Having had regard to all matters raised, I recommend that the appeal should be dismissed.

C Rafferty

APPEAL PLANNING OFFICER

Inspector's Decision

21. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the appeal should be dismissed.

C Preston

INSPECTOR